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ABSTRACT

This brief guide to the legal rights of gifted preschool, elementary, and secondary school children, first notes the lack of a federal law to protect the rights of these children in contrast to children with disabilities and the need for advocates for these students to urge adoption of appropriate statutes and regulations at the state and local levels. The guide focuses on appropriate channels to follow to assure services to all eligible students and maximize the probability of productive conflict resolution. General information is provided on the availability and implementation of the following channels to conflict resolution: (1) negotiation (maintain good records and be informed about local and state regulations and laws); (2) mediation (mediation through state statute is available for gifted students in approximately 10 states); (3) due process (approximately 28 states allow procedural due process for gifted children), and (4) court cases (an analysis has found that these cases fall into such categories as educational opportunities, school policies, and tort liability). The existence of protections for some types of gifted youth under the Office of Civil Rights is mentioned, as are the services of the Legal Issues Network, which helps advocates for gifted children. (DB)

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Know Your Legal Rights in Gifted Education

Frances A. Karnes and Ronald Marquardt

Gifted preschool, elementary, and secondary school children have very limited protections under state and federal laws. By contrast, children and adults with disabilities have, under federal statute and in turn under state law accepting federal provisions, comprehensive protections in the following areas not yet applicable to the gifted: identification for screening and program admission or eligibility purposes, educational or other institutional and related services, employment policies and practices, architectural barriers in and about public buildings and transportation facilities, and other civil rights protections.

Parents, educators, and other concerned adults involved with gifted children should know the legal framework in which the education and related services are set forth. The Jacob K. Javits Gifted and Talented Students Act of 1994 was not established by Congress to protect the legal rights of gifted children, but rather to provide for model programs and projects. In contrast, the Individuals with Disabilities Education Act of 1997 does give extensive legal rights to persons with disabilities.

Without a federal law to protect the legal rights of gifted children, the responsibility for such mandates rests with the states. Approximately 30 states have a mandate to serve gifted children, while the remaining ones have permissive legislation (Council of State Directors of Programs for the Gifted, 1994). The National Association for Gifted Children has written a position paper supporting the concept that each state should mandate by law educational opportunities for gifted children.

For quick and authentic references, advocates for these students must have on hand the appropriate state and local statutes and regulations. State law usually defines the types of gifted children who must or may be served with state funds, and the educational provisions allowable. In a few states, the state boards of education enacted a state definition and the kinds and types of services to be provided with state revenues. Usually, the function of this body is to approve the rules and regulations or standards written by the state department of education based on the implementation of the law passed by the legislature.

In addition, the local, county, or parish school board may have passed specific implementations within its jurisdiction. To assure services to all eligible students and to maximize the probability that a dispute will be resolved productively, there are channels to follow: negotiation, mediation, due process, and court cases (Karnes & Marquardt, 1993). Parents of gifted children have, in personal success stories, documented these processes with a variety of educational issues (Karnes & Marquardt, 1991).

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Negotiation

When disputes arise within a school district over screening and identification, programming options, or other areas, the parties involved should know the steps to resolve an issue within that jurisdiction. Typically, the negotiation begins at the level at which the dispute arose. An issue on screening and identification is usually within the job description of the person responsible for assessment and testing. For classroom procedures and curriculum decisions, the teacher and principal are the appropriate parties with whom to discuss the concern. Within most districts, the next level for seeking a solution to an issue is the superintendent, then the board of education.

For person(s) who are dissatisfied and need to resolve a dispute, there are several proven practices that should be followed:

- Accurate records must be maintained at each level. Meetings and decisions or lack thereof must be documented via written correspondence.
- Be informed about local and state rules, regulations, and laws, and do not depend on hearsay.
- Policies and procedures for the exact route for resolving an issue at this level can be found in the minutes of the local school board or in a district handbook.
- Keep detailed records because some issues may take a long time to resolve.
- If an agreement cannot be reached at the local district level, then mediation may be the next step.

Mediation

The right to mediation through state statute and/or state board of education policy is available to those involved with gifted education in approximately 10 states (Karnes & Marquardt, 1991). Mediation provides an avenue to resolve an issue in an informal, amicable manner with the guidance of a trained mediator; it should involve a minimum of time, financial support, and stress. The goal of mediation is to produce a written formal document, signed by all parties, that settles the issue. The mediator is key to the process and is usually appointed by the state department of education or another state agency. He/she must have excellent interpersonal skills and communication techniques. High-level writing skills are necessary to record each step needed in the remedy. The selection and training of mediators, procedures for the meeting, and examples of poorly and well-written mediation agreements are described by Karnes and Marquardt (1991). When mediation is not a state provision or when an agreement

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cannot be reached, procedural due process is usually the next step.

Due Process

It is estimated that 28 states allow procedural due process for gifted children under the provisions of laws or regulations in special education applied to or specified for children with disabilities or under general provision (Coleman, Gallagher, & Foster, 1994).

Due process is very different from mediation. The costs of time, money, and emotional stress are greater. All decisions are the responsibility of the hearing officer. The report is written solely by the person conducting the hearing, and all aspects of the findings must be followed unless one of the parties appeals to the next highest level. The most common point of appeal is the chief state school officer or a person designated within the department of education.

The provisions for due process pertaining to gifted children vary from state to state. Variations appear in the level of the initial hearing, the selection and training of the hearing officers, jurisdiction, and the route of appeal. In the analysis of due process across states, there are also some shared common points: written prior notice to both parties about the time and date of the hearing, provisions for electronic or written transcripts of the hearing, parental choice about whether the hearing is open or closed, allowing the student in question to attend, opportunity for attorneys to be in attendance, and acceptance of expert witnesses for both sides to give testimony. After careful analysis of the due process procedures in all states and noting some irregularity, Karnes and Marquardt (1991) offered a model that avoids a conflict of interest in the process.

Court Cases

Unfortunately, when conflicts cannot be resolved through negotiation, mediation, or due process, the next step is the courts, either state or federal, depending on the focus of the issue. The authors do not advocate going to court with issues in gifted education because resolutions at lower levels are more practical and efficient. Protracted court cases can be very costly, emotionally wrenching, and adversarial.

In the analysis of court cases, Karnes and Marquardt (1991) found that the issues fall into several categories such as educational opportunities, school policies, tort liability, divorce, etc. Early entrance to public school at different levels, admission to gifted programs, curriculum modification, and issues of race and gender are the general issues embodied in the category of educational opportunities (Marquardt & Karnes, 1989). School policy conflicts include busing, teacher seniority, transfer, and certification. The latter have been increasingly a matter for the courts to decide (Karnes & Marquardt, 1995). Tort liability issues involve accidents in the school and in summer residential programs for gifted children. The issues of custody and payments for education are involved in divorce cases. In a case still pending, the idea of fraud and misrepresentation was raised in what had been promised as gifted education and the delivery of services. This could be a recurring issue.

For certain types of gifted youth, there are protections under federal law. The Office for Civil Rights in the United States Department of Education has the responsibility to protect the educational rights of students in programs or activities receiving federal support. Equal opportunities to participate must be offered to children and youth regardless of age, disability, gender, national origin, race, or color. A review of the letters of findings from 1985-1991 in response to complaints revealed 48 rulings involving gifted and talented students. The majority of the rulings focused on African-American students, although other areas including disabilities and students of various native origins were found (Marquardt & Karnes, 1994).

The Legal Issues Network (LIN) was developed at the University of Southern Mississippi to help advocates of gifted children and others. All state organizations in gifted education have been invited to participate in LIN by developing a committee to examine state laws, rules, and regulations; due process hearings; and court cases pertaining to gifted children. The LIN also provides a newsletter to the state organizations.

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